IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 358 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NITINKUMAR SHANTILAL GAJJAR - Applicant(s)
Versus
GAJJAR ASHOKKUMAR MAFATLAL & 3 - Respondent(s)

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Appearance :
MS TANUJA N KACHCHHI for the Applicant.
None for Respondent(s) : 1 - 3.
MS NANDINI JOSHI, APP for Respondent no.4.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 26/07/2006

ORAL JUDGMENT

This Revision Application has been preferred against the judgment and order of acquittal dated 27th

March, 2006, passed by the Learned Principal Sessions Judge, Mahesana in Sessions Case No.220 of 2005, whereby the benefit of doubt has been given to the accused from the accusation of the offence punishable under sections 306 and 114 of the Indian Penal Code.

2. Learned counsel for the applicant submitted that looking to the depositions of PW-2, PW 3 & PW 4, the offence has been proved beyond reasonable doubt. This aspect of the matter has not been appreciated by the Court below. Learned counsel for the applicant submitted that there are no omissions and contradictions in the depositions of the prosecution witnesses. All the prosecution witnesses have given their clear deposition to the effect that there was physical as well as mental cruelty by the respondents, which had compelled the applicant to commit suicide. This aspect of the matter has not been appreciated by the Court below and, therefore, the impugned order passed by Learned Sessions Court deserves to be quashed and set aside.

3. Learned Additional Public Prosecutor for the respondent-State submitted that the State has taken decision not to prefer an appeal against the impugned order. Apart from this aspect, it is a fact that there

is approximately 21 to 22 years marriage life. Neither the prosecution witnesses have given any evidence when physical or mental torturing was meted out by the respondents. Even if the deposition of the witnesses are taken as they are, between alleged cruelty and the suicide committed by the deceased Chandrikaben, there must be live link. Looking to the deposition of the prosecution witnesses, they are partisan witnesses, one of them was divorcee of respondent No.1-accused. Two sisters have married with two brothers and, therefore, PW-3, who was initially the wife of respondent No.1 Gajjar Ashokbhai. Other two witnesses are mother and the brother of the deceased and their depositions may be read much more accurately by this Court and in their depositions, it is nowhere stated that when cruelty was committed by respondent No.1. No details are given. Nor even approximate period of cruelty is given so that one can come to conclusion, that because of cruelty, suicide has been committed. It is further submitted that looking to the deposition of prosecution witnesses, respondents were not allowing the deceased Chandrikaben to talk on phone with her husband, who is residing at United State of America. Second allegation is that about some household work, the respondent-accused were taunting the deceased Chandrikaben. Not a single witnesses conveyed

what is the cruelty committed by the respondents upon deceased Chandrikaben. Not a single witness has also narrated as to when the physical beating was done by the respondents. This allegation is vague and, benefit of doubt is given by the Trial Court. Looking to the deposition of the prosecution witnesses, no error is committed by the Trial Court in appreciating the depositions of the witnesses and evidence on record.

4. Having heard the learned counsel for both the sides and looking to the evidence on record, I see no reason to take any deviation from the conclusion arrived at by the Principal Sessions Judge, Mahesana in Sessions Case No.220 of 2005. The order of acquittal dated 27th March, 2006, passed by the Trial Court by giving benefit of doubt from the accusation of sections 306 and 114 of the Indian Penal Code is absolutely true, correct for the following facts and reasons:-

(i) The incident had taken place around 21st July,2005 and the deceased Chandrikaben committed suicide. The complaint was filed after couple of days. Marriage life of the deceased Chandrikaben with her husband, who is residing at United States of America is approximately 21 to 22 years. Looking to the evidence, it

is alleged by the prosecution that the respondents were not allowing the deceased Chandrikaben to talk with her husband on telephone and secondly, the respondents were telling something to Chandrikaben about household work and, therefore, she has committed suicide. The investigation was carried out, charge sheet was filed. As per depositions of prosecution witnesses, benefit of doubt is given by Learned Principal Sessions Judge, Mahesana and, therefore, the present Revision Application has been preferred. Looking to the deposition of PW-2 Gajjar Nitinkumar Shantilal, who is brother of deceased Chandrikaben, he has narrated that the respondents were not allowing the Deceased Chandrikaben to have telephonic talk with her husband. Whenever some amount they were receiving from her husband, the said amount was never given to the deceased Chandrikaben. No date, no time, no period has been given by this witness. There is also a general allegation that the respondents were causing physical and mental harrasement. No incident, no time, no narration as to how the physical and mental cruelty was meted out to the deceased. Similarly, looking to deposition of PW-3, Ilaben Jaswantbhai Gajjar, there is also a general allegation that there is a mental cruelty because of the respondents. Respondents were also beating deceased Chandrikaben. This witnesses has also not given

any details as to the proximity of time. No detailed version has been given as to what type of mental cruelty was committed. She is such a witness, who has taken divorce from respondent No.1-accused. Two sisters have married with two brothers. These witness, looking to the cross-examination is a divorcee from respondent No.1-accused. Looking to the deposition of PW-4 Shakriben Shantilal, who is mother of the deceased, there are also general allegations. Nowhere she has stated that how there was a mental cruelty to the deceased and when there was a physical harassment by respondents. This witnesses is silent on all these aspects. It is also stated by PW-4 that respondents were taking work of agricultural operation from deceased Chandrikaben. Looking to the depositions of these three witnesses, it is not established beyond reasonable doubt that the respondent-accused have committed the offences punishable under sections 306 read with section 114 of the Indian Penal Code. There is no proximity of reasons and consequence of suicide. So general and vague are the allegation and that too, by partisan witnesses. The prosecution has failed to examine the independent witnesses, so far as physical harassment is concerned. Suicide has been committed approximately on 21st July,2005. It is not a case of witnesses that on around

21st July,2005, there was physical or mental cruelty committed by the respondents. Neither of these witnesses have narrated that on or around 21st July,2005, the respondents were not allowing the deceased to talk on telephone with her husband. This aspect of the matter has been correctly appreciated by the Trial Court. The offence ought to be proved beyond reasonable doubt.

(ii) Looking to the over all evaluation of the prosecution witnesses, it is doubtful that the respondents had committed the offence punishable under sections 306 and 114 of the Indian Penal Code. Hundred possibilities cannot be equated with one truth. Even though the prosecution witnesses are brother, sisters and mother as PW-2, PW-3 and PW-4, not a single witness has narrated what the respondents were telling to deceased Chandrikaben, which has compelled the deceased Chandrikaben to commit suicide. Not a single prosecution witnesses has pointed out that on which date the deceased Chandrikaben was denied to have a telephonic talk with her husband. It appears from the evidence that the respondents were sometimes telling to her about some household work. This cannot be said physical and mental cruelty.

(iii) The marriage life between deceased Chandrikaben and respondent no.1 was approximately 21 to 22 years. Deceased Chandrikaben was residing with accused as family member, under one roof, since more than two decades, is having children and on not a single occasion, there was a complaint filed by her, against any accused for cruelty. Looking to the general allegations of highly interested witnesses and looking to overall evaluation of facts on record, the Trial Court has rightly given the benefit of doubt. There is no error committed by the Learned Principal Sessions Judge, Mahesana in appreciating the evidence on record.

5. As a cumulative effect of the aforesaid facts and reasons and the evidence on record, there is no substance in this Revision Application and, therefore, the same is hereby dismissed.

(D.N.PATEL,J)

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